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JOHN T. FEY,

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA, DEFENDANTS

Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint by the United States

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Brief of the State of Louisiana In Opposition to Motion for Judgment on Amended Complaint by the United States

PRELIMINARY STATEMENT

Plaintiff's brief states the basis of this Court's jurisdiction, the statutes involved, and the basic issues raised by the pleadings. There is therefore no need to repeat such facts except to refer to them during the course of argument whenever appropriate.

The real controversy between the United States and the defendant states bordering the Gulf of Mexico has to do with an interpretation of the Submerged Lands Act of 1953 (67 Stat. 29, 43 U.S.C. Sec. 1301, et seq.), or the meaning of that Act as regards these five States. The constitutionality of the Act cannot be an issue in this case. (*Alabama vs. Texas, et al* 347 U.S. 272; *Rhode Island, et al, vs. Louisiana, et al,* 347 U.S. 950.)

When Louisiana presented its case in April, 1957, it had the view that a divided court having rendered

the California decision, which a divided Court followed in the original Texas decision, and the Congress of the United States having disagreed with its conclusions, this Court might well reconsider the entire matter. On such a reconsideration the State of Louisiana, we thought, would prevail. When the case was argued on April 8, 1957, several Justices, including those who had been in the minority in two of the original cases, made it very clear that reconsideration of the original California, Louisiana and Texas cases would not be given. It thus appears that vindication of Louisiana's right to a seaward boundary three leagues from its coast depends upon the interpretation of the Submerged Lands Act, which we think is wholly sufficient therefor (but not for the larger claims heretofore made by Louisiana for the entire continental shelf) and our present argument shall therefore be restricted to the rights which Louisiana acquired from Congress and the President by the enactment of the Submerged Lands Act.

The five Gulf Coast States are filing a common brief as to the meaning and effect of the Submerged Lands Act. As nearly as can be, this separate brief will be confined to the following questions:

QUESTIONS PRESENTED

1. Whether the State of Louisiana is entitled to all submerged lands and natural resources within three leagues of its coast in the Gulf of Mexico.

2. Whether the Act of Admission of Louisiana into

the Union fixed its boundaries three leagues from the coast; or whether such a boundary was approved by the United States prior to the enactment of the Submerged Lands Act.

3. Whether Louisiana's historic boundaries were at least three leagues from coast prior to or at the time of its admission into the Union.

4. Whether Act 33 of 1954 passed by the Legislature of Louisiana correctly recognized its coast line as the line dividing the inland waters from the open sea in accordance with the definition of "coast" contained in Section 2(c) of the Submerged Lands Act. (67 Stat. 29, 43 U.S.C. 1301).

SUMMARY OF ARGUMENT

I.

The Submerged Lands Act confirms and recognizes State title to submerged lands and natural resources within historic boundaries. These boundaries by virtue of Sections 2(b) and 4 of the Act are the boundaries as they existed prior to or at the time of admission of each State into the Union, or as subsequently approved by Congress, but not exceeding three leagues in the Gulf of Mexico. (67 Stat. 30, 31, 43 U.S.C. 1311, 1312).

II.

Louisiana's Act of Admission fixes the seaward boundary of the State three leagues from the coast, and Louisiana is entitled to all submerged lands and

natural resources within such boundary. (67 Stat. 30, 43 U.S.C. 1311).

The language of the Enabling Act and the Act of Admission designating the boundary of the State of Louisiana, as "all that part of the territory or country . . . , contained within the following limits . . . thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast . . ." specifically fixes a water boundary in the Gulf of Mexico.

The Southern and Southeastern boundary of the State was described as the Gulf of Mexico "including all islands within three leagues of the coast" and the same is a water boundary which this Court has recognized as the deep water sailing channel lying offshore at least three leagues from the coast (*Louisiana vs. Mississippi*, 202 U.S. 37, 43). The water boundary three leagues from coast was approved by the United States in establishing international boundaries in the Gulf of Mexico prior to the enactment of the Submerged Lands Act. *United States vs. Texas*, 162 U.S. 1, recognizes the same limits at the western end of the State.

III.

If the Court considers that it is necessary to go beyond the language of the Act of Admission to construe its meaning, it should be interpreted in the light of all available contemporary evidence including subsequent Acts of Congress and Treaties bearing on

boundaries in the Gulf of Mexico, contemporaneous construction of the Act of Admission, custom and usage and the implied intent of Congress to deal with equality respecting States in this particular region. All of these support a three league seaward boundary from the coast of Louisiana.

A. The Gulf of Mexico presents a special situation which justifies a regional three league seaward boundary. Regional peculiarities and historic grounds furnish reasons for a more extended marginal belt in this sea than in the Atlantic and Pacific Oceans. The configuration of the coast line, the shallowness of the sea, the nature and location of the Gulf, its past history, and the absence of international conflicts in this area all furnish grounds for a different international rule and a different statutory rule for this region. This Court in 1804 recognized the rule that "In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to." *Church vs. Hubbart*, 2 Cranch 187, 234-235, 2 L.Ed. 249, 265.

B. The jurisdiction exercised by France and Spain over the Louisiana Territory prior to the Act of Cession by France to the United States extended seaward far beyond three leagues. The Louisiana purchase included the territory to the same extent that it had been possessed by France and Spain and obligated the United States to maintain the ownership

of the inhabitants of the territory within such boundaries.

C. Contemporaneous political pronouncements and the action of Congress in admitting the remainder of the Gulf States into the Union establish beyond doubt the intent of Congress to have a water boundary for the nation and the States that compose it at least three leagues from coast into the Gulf of Mexico.

Approval of the three league belt by the political branches of the government following Louisiana's admission into the Union, furnishes further evidence that the Act of Admission intended to include three leagues from coast ~~with~~ within the Gulf of Mexico as a part of Louisiana.

The international boundary Commission was established by the United States and Mexico in compliance with treaties of 1884, 1889 and 1900 between these countries and this Commission made the required survey. This survey established a boundary which it unequivocally called "the international boundary line" and shows the international boundary begins three leagues from land and opposite the mouth of the Rio Grande. A reduced copy of this map is attached to the joint brief. See also the reproduced original and reduced scale copy, Maps 6 and 7, of the Map Appendix to Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States, filed March 28, 1957. All references hereinafter made to Louisiana "Original Brief," "Appendix," and "Map

Appendix" shall refer to the above-named brief, appendix and map appendix.

D. The Legislative history of the Submerged Lands Act shows that Congress was aware of the long continued possession of Louisiana of submerged lands and waters three leagues and more seaward from the coast, and that the United States acquiesced in such possession and claims of ownership.

E. Plaintiff's motion admits facts pleaded in the answer of the State of Louisiana. Louisiana has exercised since 1812 acts of ownership and possession three leagues or more seaward in the Gulf of Mexico with the knowledge, approval, and acquiescence of the United States. Contemporaneous construction of the Act of Admission is evidence that will show that a three league boundary in the gulf was understood and intended by State and Federal Governments. The rule concerning contemporaneous construction is one of interpretation rather than estoppel or prescription.

IV.

In the Submerged Lands Act Congress consistently recognized three miles as the limit in the two great oceans, and the International Boundary as the limit in the Great Lakes. There is nothing in the Act, or in prior acts of the legislative and executive departments to show an intent to adopt for the Gulf Coastal States an unequal and variable measure of territorial sovereignty in the sea adjoining their shores.

V.

The United States has fixed the national boundary three leagues in the Gulf and all State boundaries are co-extensive with the national boundary. The fixing of the national boundary three leagues in the sea constitutes an approval of state boundaries to that extent in accord with Sections 3 and 4 of the Submerged Lands Act.

VI.

The Louisiana coast has been defined by the United States Coast Guard pursuant to congressional authority. Act 33 of 1954 by the Legislature of Louisiana acknowledged and accepted this line in accordance with applicable Acts of Congress as the line dividing the inland waters from the open sea. This line shown in Louisiana's Map Appendix is authorized by Section 2(c) of the Submerged Lands Act (67 Stat. 29, 43 U.S.C. 1301) and accomplishes stability and certainty of location. It agrees with the water boundary recognized by this Court in *Louisiana vs. Mississippi*, 202 U.S. 37, and in *United States vs. Texas*, 162 U.S. 1.

ARGUMENT

I.

THE SUBMERGED LANDS ACT CONFIRMS AND RECOGNIZES STATE TITLE TO SUBMERGED LANDS AND NATURAL RESOURCES WITHIN HISTORIC BOUNDARIES.

Louisiana takes the position that the United States fixed its boundaries three leagues from coast in

the Act of Admission and that this boundary is recognized by the Submerged Lands Act. Whether or not the Submerged Lands Act established a three league national boundary, the United States by that act nevertheless did relinquish and quit claim to the states bordering the Gulf of Mexico any and all right, title and interest which it might have in the submerged lands and natural resources within three leagues from coast, if their historic boundaries went that far. This necessarily follows from the express wording of the Act of Congress. Section 3 of the Act, 43 U.S.C. 1311 is written as follows:

> "(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters . . . are, hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States. . .
>
> "(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters. . ."

The act defines the term "boundaries thus in Section 2(b) of the Act:[1]

> "(b) The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress . . . but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;"

The term "coast line" is defined as follows in Section 2(c)[2]

> "(c) The term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;"

The seaward boundaries of the State that are approved and confirmed by the Act are further provided for in Section 4 as follows:[3]

> "The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes,

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[1] 67 Stat. 29, 43 U.S.C. 1310.

[2] Id.

[3] 67 Stat. 29, 31, 43 U.S.C. 1313.

> to the international boundary. . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

It will be noted that the act consistently refers to "boundaries" and that historic boundaries of the States not exceeding three leagues from coast in the Gulf of Mexico are recognized and confirmed. Congress and the President intended that the Gulf Coast States should have the rights provided in the Act to their historic boundaries. Otherwise, it was an idle and foolish gesture to provide in Section 4 that "nothing in this section is to be construed as questioning or in any manner prejudicing the *existence* of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress." (Emphasis supplied)

Furthermore, Congress meant something when it said in Section 2(b) of the Act that the term *boundaries* "includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . but in no event shall the term 'boundaries' . . . be interpreted as extending . . . more than three marine leagues into the Gulf of Mexico." Both State and

National boundaries in the Gulf have been repeatedly recognized by the Congress as extending three leagues into the Gulf of Mexico, and Congress was aware of that fact when it passed the Submerged Lands Act.

We have said in the joint brief that it is not necessary for the Court to pass upon the matter of the national boundary in order to recognize the Gulf Coastal States as owning the submerged lands and natural resources within three leagues of coast. But Louisiana cannot be denied these submerged lands and resources unless the Court refuses to accept the Submerged Lands Act as designating historic boundaries to measure the rights acquired by the States thereunder or as the extent of Congressional recognition of state and national territorial boundaries.

II.

LOUISIANA'S ACT OF ADMISSION FIXES THE BOUNDARIES OF THE STATE THREE LEAGUES FROM COAST AND LOUISIANA IS ENTITLED TO ALL SUBMERGED LANDS AND RESOURCES WITHIN SUCH BOUNDARIES.

Pursuant to an Act of Congress approved March 26, 1804 (2 Stat. 283) the United States divided the territory embraced in the Louisiana Purchase into two territories. It designated as the "Territory of Orleans" all of that portion ceded to it by France which lies south of an east and west line commencing on the Mississippi River, at the 33rd degree of north latitude and extending west to the western boundary

of the said cession. No part of this territory, and certainly no submerged lands or territorial waters were excepted from the Territory of Orleans. The United States reserved no part of the sea or submerged lands as National territory or public domain.

Thereafter, in accordance with the treaty obligations of the Louisiana Purchase, Congress on February 20, 1811 passed an enabling act authorizing the people of the Territory of Orleans to form a constitution for the admission of Louisiana into the Union, and described its territorial limits as:[4]

> ". . .*all* that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the River Sabine, thence by the line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude . . . (the other courses follow) . . . and from thence . . . *to the gulf of Mexico; thence bounded by the said gulf* to the place of beginning; *including all islands within three leagues of the coast*, . . ." (Emphasis supplied)

The Constitution of Louisiana was formed, and on April 8, 1812 Congress passed an act admitting the State into the Union. The boundaries were de-

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[4]2 Stat. 641.

scribed in the preamble of the Louisiana Constitution with the following preface:

> "We, the representatives of the people of *all* that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April, 1803, between the United States and France, contained within the following limits, to wit; beginning at the mouth of the river Sabine, thence by a line drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude . . . (the other courses follow) . . . and from thence . . . *to the Gulf of Mexico . . . thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast . . .*" (Emphasis supplied)

The description that follows is identical with that of the enabling act and it likewise concludes:[5]

> ". . . and from thence, along the middle of said river (Iberville) and lakes Maurepas and Pontchartrain, to the gulf of Mexico; *thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; . . .*" (Emphasis supplied)

It is plainly evident that Congress in the Enabling Act of 1811 as well as in the Act of Admission of 1812, in describing that part of the Louisiana Territory to be included in the State of Louisiana, was describing the new State's boundaries or "limits" and was not grant-

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[5] 2 Stat. 701.

ing or merely including islands. The inclusion of the islands was merely incidental to the fixing of the limits.

Plaintiff originally argued that Louisiana was not entitled to any submerged lands more than three miles seaward of its coast, but concedes now that the State is entitled to all of the submerged lands and waters lying between the shore and the islands three leagues seaward therefrom. Thus on page 177 of the Government's brief this statement is made:

> "While the United States denies that the phrase, 'including all islands within three leagues of the coast,' described any submerged lands, we do agree that Louisiana is entitled, though for a different reason, to the submerged lands between its islands and mainland."

The reason why Louisiana is entitled to the submerged lands between the offshore islands and the mainland is that the marginal belt is three *leagues* in breadth. If it were only three miles wide the submerged lands and waters would not be included in their entirety because the islands to the east of the mainland are three leagues seaward. Therefore, a line drawn three miles from shore and three miles around the islands would fail to meet in the middle and would leave a strip of sea three miles in width which would, under plaintiff's theory be a part of the open sea. Plaintiff only concedes that Louisiana is entitled to a three mile belt of territorial waters around these islands. Yet plaintiff says (Br. 177):

> "Thus the islands, together with the line marking the outer limit of the intervening inland waters, constitute the 'coast' of Louisiana in the sense of the Submerged Lands Act."

This conclusion necessarily follows from the opinion and decree of this Court in *Louisiana vs. Mississippi*, (202 U.S. 1, 37). It may be read in connection with plaintiff's statement in the footnote on page 166 of its brief wherein the Government sought to answer Louisiana's argument that Art. II of the Louisiana Purchase Treaty "included the adjacent islands belonging to Louisiana" and emphasized the inclusion of a water area. Plaintiff's footnote reads:

> "[53]Louisiana asserts that the reference islands in Article II of the Louisiana cession, quoted above, 'gave emphasis to the acquisition of the marine area.' Answer of the State of Louisiana to the Amended Complaint, Par. XI (C), p. 9. In fact, this provision makes it perfectly clear that the marine area now claimed by the State was not included within the perimeter of 'Louisiana' as understood by the parties, for if it had been the islands would have been within it rather than 'adjacent'."

Plaintiff's statement above is to the effect that the parties to the Louisiana Purchase would have used the term "within" to embrace the islands which were unquestionably conveyed, rather than to have used the term "adjacent islands". But Congress used in the act of admission the very term now said by the

government to be needed to establish a water perimeter or boundary. Thus the United States purchased *all* that France had, and gave meaning as to the extent of the areas purchased by using the very words now deemed by the government to have been needed to establish a perimeter three leagues from coast into the Gulf of Mexico.

The definition of the preposition "within" supports the idea of a perimeter or boundary. In 45 Words and Phrases, Permanent Edition, Cumulative Pocket Parts, page 112, the following definitions appear:

> "The preposition 'within' ordinarily means 'inside of', 'in the limits or compass of', *Majeski vs. Stuyvesant Homes*, Ch., 55 A. 2d 33, 38, 140 N. J. Eq. 460.
>
> "The adverb 'within' is defined as meaning in or into the space or part enclosed by the outer surfaces or between encompassing sides and, as a preposition the word is defined as in the inner or interior part of; inside of; not without; in the limits or compass of." Citing *Town of Alexandria vs. Clark County, Mo.*, 231 S. W. 2d 622, 623, 624.

It is, therefore, evident that the description in Louisiana's Act of Admission is a description of a boundary or a perimeter three leagues from coast drawn so as to include all islands within that perimeter.

Plaintiff on page 176 and again on page 253 of its brief calls attention to the acts of admission of

Mississippi and Alabama which fix their southern boundaries in the Gulf of Mexico "including all islands within six leagues of the shore", and says that it would be surprising "to find Congress at that late day claiming a marginal belt of *six* leagues, particularly in view of the fact that only a few years before it had limited Louisiana to islands within *three* leagues." There are two answers to this:

First, the United States did not wish to permit any of the islands offshore in the Gulf to be seized or occupied by any foreign power and therefore drew boundaries in the Gulf which would include them, and

Second, in the light of the extended claims being urged by Presidents Jefferson and Adams just prior to Louisiana's admission, that a three league boundary or a boundary to the Gulf stream on our eastern coast would be in keeping with "the character of our coast", the Congress assumed that a three league extent of territorial waters would be reasonably necessary to our safety in the Gulf of Mexico. By including all islands within six leagues of the shore within the Mississippi and the Alabama boundaries, Congress also included all the submerged lands and waters of Mississippi Sound. This would of course, be permissible only if a three league marginal belt were recognized. This is so because the islands are six leagues or eighteen miles offshore. A three league belt from the shore would lie adjacent to a three league belt

around the fringe of islands thus including all the waters of the Sound. On the other hand, if a three mile belt were the limit of territorial waters, there would be a twelve mile strip of open sea between the islands and the shore. Plaintiff necessarily admits that the waters and submerged lands in the Mississippi Sound belong to Alabama and Mississippi because these waters were characterized as inland waters in the case of *Louisiana vs. Mississippi*, supra, (Pltfs. Br. 254).

The fact is that the eastern and southern boundary of Louisiana in the Gulf of Mexico is a *water* boundary the same as the western boundary in the Sabine River is a water boundary. The fact is that the western boundary of Louisiana was at least three leagues seaward in the Gulf as recognized by the court in *U. S. vs. Texas*, 162 U. S. 1, 31-32. Spain and the United States fixed their corner at the mouth of the Sabine River three leagues *in the sea* by their Treaty of Limits of 1819 (8 Stat. 252). Article III of this treaty said that the "boundary line between the two countries, west of the Mississippi, shall begin *on* the Gulph of Mexico, at the mouth of the River Sabine *in* the sea, . . ." (Emphasis added) This beginning corner is the southeast corner of Texas and necessarily the southwest corner of Louisiana. The fact that the three league boundary in the Gulf is a water boundary is recognized by the court in *Louisiana vs. Mississippi*, 202 U.S. 1, 43, thus:

> "The eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep water sailing channel line to get around to the westward. A little over one year later Louisiana was created a state by the act of Congress of April 8, 1812, with this identical eastern boundary line; and the addition of territory by the Act of April 14, 1812, did not affect the deep-water sailing channel line as a boundary."

The Court then goes on to say that the deep water sailing channel is Louisiana's boundary. This is of course inconsistent with the plaintiff's contention that the Southern boundary along the Gulf of Mexico was the shore line.

Louisiana's eastern and southern boundaries—water boundaries three leagues from the coast—are plainly shown in red marking on maps that appear as diagrams 1, 2 and 5 between pages 924 and 925 of 50th Law Edition and pages 35 and 36 of 202 U.S. Reports. These boundaries apparently follow the deep water channel all the way from the Pearl River on the east to the Sabine River on the west. These maps are referred to in the text of the Court's opinion as showing the limits defined by Louisiana's Enabling Act of 1811 and its Act of Admission of 1812. (202 U.S. 36-7) Diagram No. 2 is reproduced here on opposite page.

The decree recognizes the deep sailing channel around to the east of the Chandeleur Islands "to the

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Louisiana

Gulf of Mexico" as Louisiana's eastern and southern boundary, and recognized "the sovereignty and ownership of the state of Louisiana in the land and water territory south and west of said boundary line as laid down on the foregoing map." (202 U.S. 59)

Although the Court, in the foregoing decision, said that "Questions as to the breadth of the maritime belt or the extent of the sway of the riparian states require no special consideration here." . . . (202 U.S. 52), nevertheless the Court did say, and the maps referred to and attached to its opinion do show, that the southern and eastern boundaries of Louisiana are water boundaries lying seaward of the shore line three leagues or more distant therefrom.

Although the United States was not a party to the above quoted case it is nevertheless bound by the opinion and decree therein rendered. See *Florida vs. Georgia*, 17 How. 478, 15 L.Ed. 181, 49 Am. Jur. 247.

The United States was a party to the suit of *United States vs. Texas*, 162 U.S. 1. In that case the boundary of Texas was unmistakably recognized as commencing three leagues from land in the Gulf of Mexico at the mouth of the Sabine River. This recognized the long established territorial southeast corner of Texas. The southeast corner of Texas was fixed as a territorial corner on the border of the United States after Texas gained its independence and long before . Unmistakably this recognized that the southwest corner of the United States extended at least as far as the

southeast corner of Texas, otherwise the United States could not have had any part in establishing it. At the time, no one in the United States would have been heard to say that there was a federal territory seaward of the boundaries of the states which compose the Union. Not even to this day has this Court made any such finding. And even in the Submerged Lands Act and the Outer Continental Shelf Lands Act it is made clear that the "proximity claims" or "extraterritorial" assertions of the United States begin only where the territorial claims of the Nation *and* States end. Beyond any doubt the territorial southwest corner of Louisiana has been recognized by the United States as being three leagues from coast in the Gulf of Mexico at the mouth of the Sabine River.

The comprehensive language of the Act of Admission provides that Louisiana is to have *all* of the area within the limits set. We submit therefore that this Court has determined these essential facts:

1. That the State of Louisiana contained a water area;

2. That the eastern water boundary is the deep-sailing channel extending to a southern water boundary in the open sea or Gulf of Mexico three leagues from coast;

3. That the western corner of Louisiana extended three leagues in the sea at the mouth of the Sabine River.

We further submit that the only conclusion to be reached by the language of the Act of Admission is

that the eastern and southern boundary of Louisiana is a water boundary three leagues from coast. We further submit that the two distinctive points, or corners, of this boundary are:

(a) The point in the Gulf of Mexico where the deep sailing channel carries the eastern boundary to the open sea and thence westward;

(b) The place of beginning which is the mouth of the river Sabine *in the sea* three leagues from coast.

Obviously the same three league limit is applicable along the entire coast.

III

ALL AVAILABLE CONTEMPORARY EVIDENCE, STATUTORY CONSTRUCTION, CUSTOM, USAGE, AND IMPLIED INTENT OF CONGRESS SUPPORT THE THREE LEAGUE BOUNDARY THEREIN DESCRIBED.

A. The Gulf of Mexico Presents a Special Situation Which Justifies a Regional Three League Limit.

It is well known now and it was well known in 1812 that off the shore of Louisiana there is a large area regularly covered by water too shallow to admit the passage of such ships as would be embarked on the high seas. The earliest maps of the gulf coast area show this and the most recent maps of the gulf coast show it also. The submerged lands in this area are so close to the surface of the water that each

storm or high wind in this area, and there are many each year, shifts the sands in such a way as to cause the land to emerge and to submerge. Consistently through the history of this area, whether in the hands of some foreign power or in the hands of the United States, Louisiana's coast has been considered to be that line at which the shallow waters meet the open sea. This was recognized by the United States Government in the establishment of what the government now seeks to minimize as the Gulf *Coast Guard Line*, and which the State of Louisiana recognizes and accepts as the Gulf Coast Line. This is the basis upon which Act 33 of the Louisiana Legislature of 1954 was enacted. This was not a unilateral attempt on the part of Louisiana to fix its boundary without regard to the will of Congress, for Louisiana asserts no such right, but it was an acceptance by Louisiana and a recognition by Louisiana that the federally fixed line of demarcation between inland waters and the open sea was in truth and in fact the coast line of Louisiana based upon the finding of the Federal Government itself, acting pursuant to the direction of the Congress (Act of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151). This undertaking was long prior to the Submerged Lands Act, long prior, indeed, to the discovery of oil in the Gulf Coast area.

The history of the Gulf of Mexico, its geographic location, and its coastal characteristics justify the fixing of State boundaries further seaward than those bordering on the two great oceans. These considera-

tions find expression in the provisions of the Submerged Lands Act which gives recognition to a three league boundary in the Gulf, although a three mile rule was fixed by Congress for the Atlantic and Pacific coast states.

One of the leading authorities on international law at the present time is Doctor Louis B. Sohn of the Harvard Law School. He was formerly legal officer in the Secretariat of the United Nations, editor of *Laws and Regulations on the Regime of the High Seas*, 2 vols. (published in the United Nations Legislative Series, 1951-52, editor of *Cases on World Law*, (1950), and *Cases on United Nations Law*, (1956). At the request of the defendant States he has studied this matter and prepared an extensive memorandum on the subject which is attached as an appendix to the joint brief filed on behalf of all the Gulf Coast States.

The following remarks are taken from Dr. Sohn's "Memorandum on the International Law Questions Involved in *United States vs. State of Louisiana, et al*," Pages 22-25:

> ". . . Even if it were assumed that the three-mile rule had been accepted by international law in general, and by the United States in particular, as a basic principle for determining national jurisdiction over territorial waters, international law recognizes exceptions based on regional peculiarities or on historic grounds. It has been noted before that the correspondence of 1793 and the

statements by President Jefferson in 1805 and 1806 anticipated that special rules may be issued by the United States in view of the special 'character of our coast' and the 'natural boundary' of the Gulf Stream. (6 *Writings of Thomas Jefferson* 440-42 (ed. of 1895); 1 *American State Papers: Foreign Relations* 66 (ed. of 1832); 1 *Memoirs of John Quincy Adams* 375-76 (ed. of 1874).) Chief Justice Marshall stated the two basic principles with his usual clarity. In the first place: If the means adopted by a State 'are such as are reasonable and necessary to secure their laws from violation, they will be submitted to.' Secondly: 'In different seas and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to.' (*Church vs. Hubbart*, 2 Cranch 187, at 234-36 (1804).) Chancellor Kent summarized the attitude of the American Government on this question as follows: '. . . in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity from belligerent warfare, for the space between that limit and the American shore.' (1 Kent, *Commentaries on American Law* 30 (1826).) He accepted also the idea that all waters enclosed within a line drawn from the south cape of Florida to the Mississippi should be considered to be under the control of the United States. It cannot be doubted that after the extension of the American territory to the Rio Grande, Kent

would not have hesitated to draw a similar line from the mouth of the Mississippi to the Mexican boundary. In any case, in view of the "shoalness" of the Gulf coast it can be assumed that Kent would have accepted as a valid exercise of American jurisdiction the extension of jurisdiction by the Gulf States three or four leagues into the Gulf. ". . . This point of view is confirmed by the attitude taken by the United States with respect to the sea boundary of Texas and the Gulf boundary between the United States and Mexico. (See the separate Memorandum accompanying the brief for the State of Texas.) Mexico seems to have always proceeded on the assumption that its jurisdiction extended three leagues or twenty kilometers into the sea and this claim was recognized, either generally or at least for some purposes, by a series of treaties concluded by Mexico in the second half of the nineteenth century. (See, e.g., treaties between Mexico, on the one hand, and China, the Dominican Republic, Ecuador, El Salvador, France, Germany, the Netherlands, Norway and Sweden, and the United Kingdom, on the other hand, concluded between 1882 and 1899; the relevant provisions are reproduced in 1 United Nations, *Laws and Regulations on the Regime of the High Seas*, at 147, 153, 154, 156, 169, 170, 171-2 (United Nations Legislative Series, 1951).) A special regional rule of international law has thus developed in the Gulf of Mexico, based on a three-league limit, which is similar in character and scope to the four-mile regional rule developed by the Scandinavian countries. It may be noted that the validity of the latter rule was expressly

recognized by the United Kingdom in the *Norwegian Fisheries Case*, despite the fact that the United Kingdom has been the staunchest supporter of the three-mile rule in recent years. (I.C.J. Reports, 1951, 116, at 120, 126.) If the matter of the Gulf Boundaries were submitted to the International Court of Justice for decision, the Court could easily find that the three-league rule has been established as a regional principle of international law in the Gulf of Mexico."

Dr. Sohn then goes on to state that "closely connected with the principle of regional rights is the principle of 'historic' rights." In this connection this celebrated authority on international law says:

" . . . It is quite likely that Jefferson would have considered the enactments of the Gulf States as equally valid assertions of jurisdiction leading to the creation of 'historic' rights which could be invoked by the United States in disputes with other nations. The views of Chancellor Kent, who considered a large part of the Gulf as 'included within lines stretching from quite distant headlands', would seem also sympathetic to historic claims on behalf of the United States. Except for the lone and relatively mild protest by Great Britain, no nations have made objections to the widely published treaty with Mexico of 1848, which followed the three-league rule. Such general acquiescence has created rights which should not be disturbed now, after a lapse of more than one hundred years. As the Permanent Court of Arbitration said in the Grisbadarma Case in 1909, 'it is a settled principle of the law of nations that

a state of things which actually exists and has existed for a long time, should be changed as little as possible.' (Scott, *The Hague Court Reports* 121, at 130 (1916); see also D.H.N. Johnson, 'Acquisitive Prescription in International Law,' 27 *British Year Book of International Law* 332, at 349-53 (1950.) This principle has found application also in several decisions of the Supreme Court relating to boundaries between States. (See, e.g., *Louisiana vs. Mississippi*, 202 U. S. 1, at 53-54 (1906); *Michigan vs. Wisconsin*, 270 U. S. 295, at 308, 316 (1926); *Arkansas vs. Tennessee*, 310 U. S. 563, at 570-71 (1940).)"

In conclusion, Dr. Sohn states on Pages 28 and 29 of his memorandum:

" . . . Not only were different rules permitted for different purposes, but there was also a development of divergent regional rules in various areas of the world. Consequently it was permissable for the United States to establish through express or tacit approval of the acts of the Gulf States, a regional rule of three leagues for the Gulf of Mexico. This development was approved by the only other nation directly concerned, i.e., Mexico, by the treaties of 1848 and 1853. The lone protest by Great Britain did not invalidate this action in view of the tacit acquiescence of other nations. This acquiescence led to the establishment of historic rights of Mexico and the United States (and its Gulf states) to a three league belt in the Gulf of Mexico."

Congress in passing the Submerged Lands Act recognized the truth of the principles stated by Dr.

Sohn when it recognized and approved historic boundaries not exceeding three leagues from coast in the Gulf of Mexico.

B. Louisiana's Historic Boundaries Were in Excess of Three Leagues from Coast.

Section 4 of the Submerged Lands Act (43 U.S.C. 1312) recognizes a historic boundary in excess of three miles ". . . if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union. . ." Prior to Louisiana's admission into the Union its historic territorial boundaries extended more than three leagues seaward into the Gulf. If it is necessary to go beyond the language of the Act of Admission of Louisiana, the Court should consider the Treaty of Paris between France and the United States on April 30, 1803, whereby the territory of Louisiana was ceded to the United States.[6] To properly interpret this treaty recourse must be had to certain prior treaties between France and Spain, i.e., the Treaty of San Ildefonso dated October 1, 1800 and the Treaty of Fontainebleau dated November 3, 1762. These treaties and various proclamations and edicts of the Kings of France and Spain furnish evidence concerning the historic boundaries of Louisiana and must be considered in interpreting the Act of Congress creating the Territory of Orleans,[7] and the Acts of

[6]8 Stat. 200, 2 Miller's Treaties 498.

[7]2 Stat. 283, approved March 26, 1804.

Congress admitting the State of Louisiana into the Union.[8] Excerpts from these and other treaties appear in Louisiana's Appendix, Sections D, E, and F.

The Acts of Congress creating the Territory of Orleans, and thereafter forming this territory into the State of Louisiana, were undoubtedly passed for the purpose of carrying out the obligations of the United States assumed in the Treaty of Paris[9] whereby this territory was acquired from France. The first article of this treaty reads, in part:

> ". . . the French Republic . . . doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, *with all its rights and appurtenances*, as fully and in the same manner as they had been acquired by the French Republic. . ." (Emphasis supplied)

This paragraph in the Treaty of Paris is prefaced by a recital taken from the Treaty of San Ildefonso of October 1, 1800 which is also quoted, in part:

> "His Catholic Majesty (Spain) promises and engages, on his part, to cede to the French Republic . . . . the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France

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[8]2 Stat. 701, approved April 8, 1812.
2 Stat. 708, approved April 14, 1812.
[9]8 Stat. 200, April 30, 1803.

possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States."

Article 2 provides:

"In the cession made by the proceeding article are included the adjacent islands belonging to Louisiana . . . ."

Article 3 of the Treaty of Paris concerning the cession of the Louisiana territory to the United States, provides:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and in the Religion they profess."

The Articles of the Louisiana cession thus obligated the United States to incorporate Louisiana into the Union according to the principles of the Federal Constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all of its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it.

In view of these treaty obligations the Congress of

the United States, in dividing the territory thus ceded by France, designated all that portion of the Louisiana Purchase lying South of the 33rd degree of north latitude as the Territory of Orleans. (2 Stat. 283). This southern part of the territory of the Louisiana Purchase became the State of Louisiana.

The Territory of Orleans, that part of the Louisiana Purchase which became the State of Louisiana, included therefore all submerged lands and waters extending into the Gulf of Mexico that had previously been under the claim and dominion of France and Spain. During the 18th Century France and Spain, without protest from other powers, and with the consent of Great Britain, held dominion over a great part of the Continental Shelf of Louisiana.

1. French and Spanish possession of Louisiana extended more than three leagues in the sea.

During the time that France possessed the Louisiana territory, the boundaries thereof extended far beyond three leagues in the Gulf of Mexico.

As stated in "The Louisiana Purchase", an historical sketch from the files of the General Land Office issued by the Department of the Interior in 1933 and reprinted in 1955 (Page 11):

> "French title to the territory called 'Louisiana' in the Mississippi Valley had its origin and was based upon the discovery and Proclamation of LaSalle, April 9, 1682."

LaSalle proclaimed, by virtue of discovery, title

to all the area south of the mouth of the Mississippi River, including the seas, bays and adjacent straits. LaSalle claimed the seas as well as the lands of Louisiana and his claim was never successfully disputed.

This was the first significant act of French possession in this area.

Beginning on page 154 of plaintiff's brief there is an argument that neither France nor Spain claimed the territorial jurisdiction seaward of the shore of Louisiana. Plaintiff does not cite any treaties, laws or other documents whereby either France or Spain disclaimed any title or right to territorial waters and submerged lands in the Gulf of Mexico and none of the treaties or diplomatic correspondence quoted in the brief have this effect. On the contrary, Spain and France have both claimed and exercised ownership of territorial waters both on the European Continent and in the waters bordering their possessions in America, including the Gulf of Mexico.

Plaintiff's statement that these countries have never claimed territorial jurisdiction seaward of the shore of Louisiana simply ignores the facts of history. Both nations have been parties to many treaties with other world powers wherein they have recognized territorial jurisdiction in America not less than three leagues and on some coasts to the extent of thirty leagues in the sea. These treaties are set forth in Section F of the separate Appendix filed with Louisiana's original brief. These treaties include the following:

Treaty of Utrecht, March 4, 1713, between France, Spain, Great Britain, and other European nations agreeing to 30 league limit off coast of Canada. (La. App. 89-92)

Preliminary Articles of Peace Signed at Fontainebleau, November 3, 1762 by France, Spain and Great Britain prohibiting commerce with Spanish possessions in America and recognizing ancient limits of Spanish America. (La. App. 95-97)

Definitive Treaty of Peace Signed at Paris, February 10, 1763 renewing and confirming the Treaty of Utrecht agreeing to a 30 league limit on Canadian coasts but permitting fishing within 3 leagues of coast in the Gulf of St. Lawrence and within 15 leagues from the coast of the Island of Cape Breton. (La. App. 97-99)

Definitive Treaty of Peace Between France, Great Britain, and other European nations signed at Versailles September 3, 1783 confirming the Treaties of Utrecht (1713) and Paris (1763) and fixing territorial waters for fishing off the coasts of Canada to 30 leagues but permitting French to fish within 3 leagues of the coast in the Gulf of St. Lawrence. (La. App. 99-102)

Treaty of Madrid signed at the Escurial October 28, 1790 between Spain and Great Britain fixing territorial limits 10 leagues seaward of possessions in North and South America. (La. App. 65-67)

Aside from the Proclamation of LaSalle in 1682, these treaties, executed and observed over a long period of time, establish a definite policy of France

and the other world powers of the 18th Century to recognize and approve the ownership of territorial waters to an extent far more than three leagues offshore. Treaties, custom, and usage are the foundations of international law. Those concerning the territory of Louisiana are no exception to the rule.[10]

French Juriconsults at the time of, and prior to the Louisiana Purchase, all asserted the right of France to territorial waters on the Continent and in America. See Section G of Louisiana's Appendix quoting:

> Vattel, *LeDroit des Gens* (1758) Vol. 1, p. 247, 249;
>
> De Rayneval, *Institutions du Droit de la Nature et des Gens* (1803), p. 161;
>
> G. Masse, *Le Droit Commercial dans Ses Rupports avec le Droit des Gens* (1844) Vol. 1, p. 114-115.

France and Spain were recognizing and asserting broad jurisdiction in the American Seas in the 17th and 18th centuries and Britain, the only other world power in Colonial America, was assenting to such dominion by joining in treaties recognizing it. Prior to LaSalle's proclamation taking possession of Louisiana and its seas for France, Spain was the greatest sea

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[10]The Paquete Habana, 175 US 677, 44 L. Ed. 320; Hilton v. Guyot, 159 US 113, 40 L. Ed. 95; U. S. v. de la Maza Arredondo, 6 Pet. 691, 8 L. Ed. 547; The Antelope, 10 Wheat 66, 6 L. Ed. 268.

power in the world and France under Louis XIV succeeded to that distinction in the late 17th and early 18th centuries.

The period including the early French settlement and possession of Louisiana has been described as the "Golden Age of France". All Europe was impressed with the bold assertion of Louis XIV, "L'etat c'est moi!" "I am the State" was accepted as literally true under Louis le Grand. *The Encyclopedia Americana* (1936 ed.), Vol. 17, pages 639-640 thus describes the power and prestige of France under Louis XIV:

> "After his victorious campaign in Holland, closed by the Treaty of Nimequen in 1678, he was acknowledged to be the leading sovereign in Europe. He had the most numerous, the best drilled, and the best equipped army in the world. His diplomacy had triumphed in every court, and the French Nation led Europe in art, science and letters, while trade and industry were amazingly flourishing. . .
>
> "His reign has indeed been aptly styled the Augustan or Golden Age of France."

Guy Carlton Lee's *History of North America* in Vol. III, pages 182 and 183 describes the maritime power of France at that time:

> "Neither Holland nor England was to remain mistress of the seas and some of his admirals were perhaps as great as the world has ever seen.
>
> "His glory was the inspiration of his people. By the Rhine and on the Indian Ocean, in Hudson

> Bay and on the Mississippi, the honor of Louis le Grand nerved the army and called into play all that was best in Frenchmen."

Louis, "L'etat c'est moi", was no modest monarch. When he claimed Louisiana and its seas by virtue of LaSalle's proclamation in 1682, this master of the seas certainly did not timidly limit his dominion to shallow waters along the coast, or to the shore itself, as plaintiff incongruously asserts.

Spain, which had its ascendency under Charles I and Philip II in the Sixteenth Century, was temporarily eclipsed by France under Louis XIV, but after the Treaty of Utrecht in 1713, Spain emerged to preeminence again. Spain and Britain were masters of the sea in the 18th century until the Battle of Trafalgar in 1805 settled supremacy in favor of the latter. Dr. Guy Carlton Lee's "*History of North America*" Vol. III, page 24 records this fact:

> "Spanish power was supreme not only around the Gulf of Mexico but in the islands and passes that guarded its entrance."

It would be utterly unreasonable to assume that Spain would shrink to claim anything beyond the shore line in the Gulf over which it held complete mastery. In fact, the asserted dominion of the sea "within sight of land" by Philip II, which jurisdiction was never disputed or relinquished, received the later approval of the United States when Thomas Jefferson in 1793 stated that this nation was entitled to such jurisdic-

tion by virtue of the character of its coast line.

On October 31, 1563, Phillip II. of Spain promulgated an Ordinance in which he asserted territorial jurisdiction "within sight of land or port" on the shores of Spain and its possessions. See Ernest Nys "LeDroit International" Vol. 1, p. 542. This Ordinance is referred to by the Spanish Ambassador De Onis in a communication to the Department of State at Washington under date of January 5, 1818, wherein he said: (Am. State Papers, Vol. IV, p. 455)

> ". . . in pursuance of a royal order issued for that purpose . . . Spain was established as the mistress and possessor of all that coast and territory, and she never permitted foreigners to enter the Gulf of Mexico, nor any of the territories lying around it, having repeated the royal order by which she then enforced the said prohibition, and charged the Spanish viceroys and governors with the most strict observance of the same."

In this same document the Spanish Minister after describing the discoveries and conquests of the Spanish Crown in North and Central America, goes on to say (Am. State Papers, Vol. IV, p. 456):

> "These dominions and settlements of the Crown of Spain were connected with those which we had on the Gulf of Mexico, that is to say, with those of Florida and the coasts of the province of Texas, which, being on the same Gulf, must be acknowledged to belong to Spain, since the whole circumference of the Gulf was hers; which property,

incontestably acquired, she had constantly maintained among her possessions, not because she occupied it throughout its whole extent, which was impossible, but on the principle generally recognied, that the property of a lake or narrow sea, and that of a country, however extensive, provided no other Power is already established in the interior, is acquired by the occupation of its principal points."

A treaty between Spain and Great Britain in 1670 (I Ferrater 327-328) specifically provided in Article 15 that the parties recognized the rights and dominions of each other in the American seas and waters.[11]

Again in 1742, Spain, in a Treaty with Denmark, excepted "the countries and seas of the Spanish Indies" from the general provision establishing free trade between the contracting parties (I Ferrater 89). Spain used the words "Indies" to apply to America and especially the Spanish dominions there (Shepherd's Historical Atlas, 1956, p. 107-8).

Reference has already been made to the Treaty of Madrid (1790) in which Spain and England agreed to a ten league margin of territorial seas for their possessions in North and South America. (La. App. 65-67). This treaty did not specifically include the Gulf of Mexico for the obvious reason that Spain had

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[11] Esteban de Ferrater, "Codigo de Derecho International" (Barcelona, 1846).

always treated it as a Spanish sea and at that time (1790) owned all of the territory surrounding the gulf, including Louisiana which had been ceded to it by France in the secret treaty of San Ildefonso in 1762. Spain had always insisted upon and enforced its dominion over the territorial sea "within sight of land" that had been asserted by Philip II in 1563.

In a Treaty of Peace and Amity between Spain and Tripoli, September 10, 1794 (I Ferrater 438-489) Article 4 prohibited the capture of any vessel within ten leagues "from coasts of the dominions of Spain."

On January 16, 1817 Spain protested the seizure of a Spanish ship "within sight of the Balize" which was then a gulf port at the mouth of the Mississippi River. The communication stated that this capture by a private vessel was "manifestly in violation of the territory of the United States" (Letter from Spanish minister Don Louis De Onis to Department of State, January 16, 1817, 5 British State Papers 368-71).

The domestic laws of Spain have always recognized and regulated the maritime belt both in continental Spain and in the Spanish dominions in America. The "Recopilacion de Indias" (1680) contained minutely detailed regulations for the establishment and conduct of sedentary pearl fisheries in the new world. This was an assertion of the territorial jurisdiction of Spain to the natural resources of the bed of the sea. It will be remembered that the British Commonwealths have from time immemorial claimed

such rights to natural resources in the bed of the sea. (See Riesenfeld, *Protection of Coastal Fisheries Under International Law*, p. 169-170 and La. App. 40-46.)

Spanish authorities on International Law have asserted the rights of Spain in the territorial seas. Esteban de Ferrater, in his Code of International Law, (1846) Vol. II, page 151 says:

> "The sea belongs to the State which it washes only so far as a distance of three leagues measured by a line parallel to the coast."

Abren y Bertadano, in his "Tratado Juridico-Politico Sobre Presas de Mer," (1746), says with reference to the open sea (pages 68-69):

> "But since the subjection of these seas is repugnant to the Law of Nations and to their own nature, our only question concerns the Adjacent Seas, which, without any doubt it cannot be denied, are like the ports which they join, equally subject to dominion.
>
> "Assuming that, I believe that the Prince which is the Sovereign of a region, province or island is also sovereign just as he is of the land territory of a section of the sea which washes and surrounds it for a space of 100 miles seaward. This is an infallible tradition among the jurists of all nations."

As an authority for this last statement he cites the Italian author, Crespi. He later defends this broad extent of territorial waters as against the then existing British claim of only two leagues on the ground that the narrowness of the channels around England prevents broad claims which would interfere

with the rights of other nations and with the normal course of navigation, whereas Spain is not, geographically speaking, faced with the same difficulty (page 78-81). As a matter of fact, Britain itself claimed more in the Gulf of Mexico, for on October 7, 1763, King George III proclaimed boundaries of West Florida as including all islands within six leagues of the coast (pps. 313-314, Government brief).

Don Antonio Requelme, who published his treatise *Elementos de Derecho Publico Internacional* in 1849 while he was Chief of Section in The Spanish Ministry of State, represented the official view of the Government of Spain. This is a permissible inference from the position he occupied in that government. His work was published with royal permission. From our point of view, his is therefore the most authoritative source among these later publications. In Volume I, page 23, he says:

> "By the term territory belonging to a State is understood not only its land territory, but also its . . . littoral seas."

The author further states on page 200 of this work:

> "The rule recognized by the law of nations for determining the legal status of the littoral seas is based on the idea that all is lawful for the lord of the coasts which his own preservation demands. . . ."

He again states on page 213:

> "Therefore, the opinion of the best publicists who have written on this subject is that each State, according to the physical characteristics of its adjacent seas, the configuration of its coasts, its real means of defense and the kind of dangers to which it is exposed, may determine with the knowledge of other nations, how far the action of its coast guard and the exercise of its jurisdiction shall extend; and that this maritime limit thus established, must be respected if freedom of navigation is not thereby hindered."

It therefore appears that Spain has always claimed territorial waters in the American dominions and that prior to the Louisiana Purchase in 1803 exercised jurisdiction at least three leagues from coast.

In view of these claims to territorial waters asserted and approved by France and Spain during the eighteenth century it does not comport with reason to say that either of these nations intended that their claims to the Louisiana Territory stopped at the shore. Louisiana's historic boundaries prior to and in fact at the time of admission therefore included the marginal seas in excess of three leagues from its coast. In view of Secretary of State Jefferson's foreign policy at this time that ". . . 3 sea leagues has the support of some authorities . . "[12] and that the

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[12] Letters from Jefferson to United States Attorneys, Nov. 10, 1793. Ms. in National Archives, Record Group 59.

"character of our coast—would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever . . .",[13] the claims of France and Spain certainly did have American approval.

C. Intention To Fix Louisiana's Boundary Three Leagues From Coast Is Evident From Historical Background.

Neither current ideas of international law, nor the present policy of the Department of State can modify or change in any way the meaning and the purpose of the Submerged Lands Act. However, the national historical boundary recognized at the time of Louisiana's admission to the Union furnishes evidence that a three league seaward boundary in the Gulf of Mexico was established for Louisiana in 1812.

Plaintiff's lengthy dissertation on American foreign policy (Br. 59-103) proves four propositions relied on by Louisiana and its co-defendants in this case:

1. The United States prior to and at the time of Louisiana's admission in 1812 was consistently asserting that its territorial waters extended seaward three leagues and more.

2. The agreement to limit its marginal belt to three miles announced by Secretary of State Jefferson in 1793 was provisional and was limited to the exigencies

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[13] (American State Papers, 1 Foreign Relations 183.)

of the War between England and France which existed at that time and was not related to the Gulf of Mexico.

3. The provisional agreement to a three mile limit applied only to the Atlantic coasts and did not become fixed as a policy even for our eastern shores until the later part of the 19th Century.

4. A three mile limit in the Gulf of Mexico has never been asserted by the political branches of the Government who are charged with the duty and are granted the power to fix state and national boundaries.

In our original brief beginning at page 109, and in Section E of the Louisiana Appendix filed separately with that brief, we have pointed out numerous instances in which the Department of State has asserted territorial ownership of submerged lands and waters in excess of three miles. This is particularly true in the Gulf of Mexico where the three mile limit has never been asserted. A further discussion of this subject will be made later on in this brief.

A reference to many of the statements made by representatives of the Department of State and quoted on pages 59 to 103 of the plaintiff's brief show that recognition of the three mile rule was either a temporary expedient, or related only to the Atlantic sea board, or both.

The statement of Thomas Jefferson of November

8, 1793 quoted on page 60 of the government's brief specifically declares that the United States is entitled to a much broader marginal belt and that the ultimate extent of this nation's claims in the sea is reserved "for future deliberation", and that the three mile limit would be accepted "for the present" and in connection with the war then prevailing among European powers.

The following portion of Mr. Jefferson's statement is particularly applicable to the Gulf of Mexico and especially the Louisiana shore-line:[14]

> "The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever."

He had previously stated in this letter:

> ". . . The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, *is the utmost range of a cannon ball*, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. . . ."

As will appear from the map appendix filed with Louisiana's original brief, the 10-fathom line seaward

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[14] 1 Moore, "Digest of International Law", pages 702-703.

of the shores of Louisiana is generally as far as 75 miles offshore. The area enclosed by this line is shaded in blue on the Coast and Geodetic Survey Map. The 5-fathom line varies in width from 10 to 50 miles seaward from the shores of the State. Many areas extending 30 miles seaward are less than 3 fathoms deep. It is therefore impossible for any ships except small coastal vessels to approach the Louisiana mainland unless they follow the roadsteads that go into the Mississippi, the Sabine and the Calcasieu Rivers. This condition in the words of Jefferson would entitle Louisiana "to as broad a margin of protected navigation as any nation whatever"—3 leagues or "to the extent of human sight."

Dr. Louis B. Sohn in his "Memorandum on International Law Questions involved in *U. S. vs. Louisiana, et al*" (App. Joint Brief) states that the principle which recognizes the jurisdiction of coastal states over the adjoining seas is based in part on the idea that "a state had the right and the duty to protect coastal navigation, i.e., vessels plying between various ports on the coast, as distinguished from intercontinental navigation across the high seas." (P. 9). Applying this principle to the Gulf of Mexico, he says, (P. 10):

> ". . . The special conditions in the Gulf of Mexico, where the coast vessels had to stay a little further from the coast because of the shallowness of the water, would have justified extending

the margin of protection for the coastal shipping to at least three leagues . . ."

John Quincy Adams in his memoirs, Vol. 1 p. 375-6 quotes President Jefferson's views on this subject as follows: (1 Moore 703)

> "The President (Mr. Jefferson, in an informal conversation) mentioned a late act of hostility committed by a French privateer near Charleston, S.C., and said we ought to assume, as a principle, that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed. Mr. Gaillard observed that on a former occasion in Mr. Jefferson's correspondence with Genet, and by an act of Congress at that period, we had seemed only to claim the usual distance of three miles from the coast; but the President replied that he had then assumed that principle because Genet, by his intemperance, forced us to fix on some point, and we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled; but he had taken care to reserve this subject for further consideration with a view to this same doctrine for which he now contends."

The misinterpretation given to the letter written by Thomas Jefferson, then Secretary of State, on November 8, 1793, to the British Minister and to Genet, the French Minister, that our nation's maritime boundary was three miles from the seashore was repudiated by President Jefferson. The following is taken from

Fulton's "The Sovereignty Of The Sea", 1911, p. 575:

> "It may be mentioned here that the claims which have been put forward by the United States as to the extent of their territorial or jurisdictional waters have varied greatly on different occasions. The above declaration to M. Genet was, for instance, repudiated by President Jefferson as establishing a fixed limit; and it was claimed that the limit of neutrality should extend '*to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed.*' On another occasion, in a controversy about the right of jurisdiction they claimed that the extent of neutral immunity off the American coast ought at least to correspond with the claims maintained by Great Britain around her own territory, and that no belligerent rights should be exercised within 'the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a right line from one headland to another.' The American Government endeavored to obtain from England in the same year the recognition of a territorial belt six miles in breadth, and in the draft treaty proposed in 1807 a distance of five miles was in reality specified."

An Act of Congress of February 18, 1793 for enrolling and licensing fishing vessels established jurisdiction over such licensed ships within three leagues.[15]

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[15] 1 Stat. 305, 314.

On May 15, 1793 Thomas Jefferson as Secretary of State forwarded to the French Minister an opinion on the seizure of the ship "Grange" in which the Attorney General stated:

> "The necessary or natural law of nations . . . will, perhaps, when combined with the Treaty of Paris in 1783 justify us in attaching to our coasts an extent into the sea beyond the reach of cannon shot."[16]

In a note of May 17, 1800, Secretary of State Madison suggested negotiations with Great Britain for an agreement restraining captures "within the distance of four leagues from the shore", and "if the distance of four leagues cannot be obtained, any distance not less than one sea league may be substituted."[17] This language was repeated in his instructions of May 17, 1806.[18]

On November 30, 1805 President Jefferson stated that assent was given to a limit of 3 miles in 1793 because "we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to" and that the matter had been reserved "for future consideration."

On December 3, 1805 Thomas Jefferson in his 5th annual message to Congress made the following report:

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[16] American State Papers, Class I, Foreign Relations, Vol. 1, p. 147.

[17] Crocker, "The Extent of the Marginal Seas", p. 369.

[18] 3 American State Papers, p. 122.

"Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested and our harbours watched by private armed vessels, some of them without Commissions, some with illegal commissions, others with those of legal form, but committing piratical acts beyond the authority of their commission. They have captured in the very entrance of our harbours, as well as in the high seas, not only the vessels of our friends coming to trade with us, but our own also . . . I found it necessary to equip a force to cruise within our own seas, to arrest all vessels of these descriptions found hovering on our coasts within the limits of the Gulf Stream and to bring the offenders in for trial as pirates.

"The same system of hovering on our coasts and harbours under color seeking enemies has also been carried on by public armed ships to the great annoyance and oppression of our commerce. New principles too have been interpreted into the law of nations, founded neither in Justice nor the usage or acknowledgement of nations. According to these a belligerent takes to itself a commerce with its own enemy which it denies to a neutral on the ground of its aiding that enemy in the war; . . . . ."[19]

The foregoing message had particular reference to some incidents which had occurred off the coast of South Carolina. (The map of the Gulf of Mexico which

[19] "Abridgment of the Debates of Congress" (1857) Vol. III, p. 346.

is contained in the map appendix filed with the original brief shows that the Gulf Stream off the coast of South Carolina begins at a distance of approximately 90 miles offshore from the southern boundary of that State and extends approximately 150 miles offshore at the northern boundary. The distance offshore increases as the Gulf Stream proceeds northeasterly across the Atlantic Ocean.)

Following this message of the President, Congress passed the Act of February 10, 1807.[20] This Act requested the President to cause a survey to be made of the coasts of the United States within 20 leagues of its shores, and authorized President Jefferson to take steps beyond 20 leagues and to the Gulf Stream to serve the commercial interests of the United States. The following provisions are contained in Section 2 of the Act:

> "Sec. 2. And be further enacted, That it shall be lawful for the President of the United States, to cause such examinations and observations to be made, with respect to St. George's bank, and any other bank or shoal and the soundings and currents beyond the distance aforesaid to the Gulf Stream, as in his opinion may be especially subservient to the commercial interests of the United States."

The policies of the United States respecting its maritime jurisdiction in the sea at the time of Lou-

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[20] 2 Stat. 413.

isiana's admission into the Union, and as reflected in the documents quoted above, would justify a marignal belt of territorial waters and submerged lands substantially in excess of three leagues from Louisiana's coast.

During the early 19th Century when our Government was thus insisting that the United States was entitled to a broad marginal belt in excess of three miles our executives and Congressmen were greatly influenced in their views on this subject by the writings of a celebrated French author on international law.

Georg Friedrich von Martens in 1789 published in French "Precis du Droit des Gens Moderne De l' Europe", which work was translated into English by William Cobbett in 1795 under the title of "Summary of the Laws of Nations." On page 165, Von Martens makes the statement that the exclusive right of the coastal state to all sea products is recognized "within the distance of three leagues."

A German Edition of Von Martens published in 1796 at page 46 states:

> "Pfeffel in Principes du droit naturel, bk. 3, chap. IV, sec. 15, indicates the distance of three leagues as the now universal principle. This principle is now incorporated in many treaties, even though no cannon reaches that far, especially over the sea."

Martens', "Precis du droit des gens moderne de

l'Europe", (2d ed., Paris, 1801), pp. 71-2, makes this statement:

> "Today all nations of Europe agree that, as a rule, the straits, gulfs and the marginal sea belong to it (the coastal state), at least as far as a cannon, placed on the shore, would carry. In a number of treaties the more extended principle of three leagues has even been adopted."

Riesenfeld, in his work, "Protection of Coastal Fisheries Under International Law", on page 29, makes the comment regarding Von Martens:

> "It is probably no exaggeration to state that C. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German editions of his work. Rivier calls him in his well-known Esquisse d'une histoire litteraire des systemes et methodes du droit des gens depuis Grotius jus qu's nos jours, the true originator of the systematic and scientific study of the positive law of nations."

It is therefore inescapable to conclude that when Congress passed Louisiana's Enabling Act in 1811 and the Act of Admission in 1812 it had in mind the three league marginal belt referred to by Jefferson in 1793, his messages to Congress in 1806, and the efforts made by our Department of State to obtain recognition of a broad belt of maritime jurisdiction in 1808. Having subscribed to Von Martens' work on International Law they were familiar with his authoritative statement that the exclusive dominion

of a coastal state is recognized "within the distance of three leagues" from its coast.

The provisional diplomatic agreement or stipulation made by Jefferson in 1793 in his correspondence with the foreign ministers of Great Britain and France limiting "for the present to a distance of one sea-league" our seaward jurisdiction was made specifically in connection with the war then in existence between those two nations. Stipulations having sole reference to the rights of belligerents in time of war do not apply and are not binding in time of peace. As this Court said in *The Mariana Flora*, 11 Wheat. 1, 49, 6 L. Ed. 405, 416:

> ". . . Doubtless, the obligation of treaties is to be observed with entire good faith and scrupulous care. But stipulations in treaties having sole reference to the exercise of the rights of belligerents in time of war, cannot, upon any reasonable principles of construction, be applied to govern cases exclusively of another nature, and belonging to a state of peace. . . ."

The war between France and England was not concluded until the Battle of Waterloo in 1815. In the meantime the United States went to war with England in 1812—the year when Louisiana was admitted to the Union.

1. The United States Has Never Fixed A Three Mile Limit In The Gulf Of Mexico But Has Consistently Recognized A Three League Marginal Belt There.

There has never been a treaty or international

convention entered into by the United States, or any other nation, fixing or recognizing a three mile limit in the Gulf of Mexico. Furthermore, there has never been an Act of Congress or an act of a State legislature fixing or declaring such a limit there. On the other hand there have been quite a number of Treaties and Conventions entered into by the United States, Mexico, and the Republic of Texas which have recognized and agreed upon a three league limit. Although these treaties and conventions are subsequent to the date of admission of Louisiana into the Union they nevertheless are persuasive as to the prior intent of Congress in fixing Louisiana's boundary in the Gulf. If we were to accept plaintiff's view, for the sake of argument, that Louisiana's Act of Admission fixed the shore as its Gulf Coast boundary, and that the width of the marginal belt is to be implied as a matter of foreign policy, then these subsequent developments supply the evidence as to the seaward boundary in the Gulf of Mexico at the time of Louisiana's admission. In any event, if Congress failed to fix the limit of Louisiana's territorial waters and submerged lands in 1812, it left that matter for future determination as to the national boundary, and the national as well as the state boundary was determined by these subsequent treaties and congressional acts.

The acts of admission of the various Gulf Coast States are statutes in pari materia, insofar as the width of the marginal sea ~~are~~ concerned because they

reflect the policy of the United States in the very important matter of seaward boundaries. Statutes in pari materia are to be construed together on the presumption that later statutes are enacted in accord with the legislative policy embodied in prior acts. As stated in Sutherland on *Statutory Construction*, 3rd Ed. Vol. 2, page 530, Sec. 5201:

> ". . . On the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together. Provisions in an act which are omitted in another act relating to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purposes. . . ."

Treaties made by the political department of the Government are laws of the United States and stand on the same footing as Acts of Congress.[21] They should likewise be construed with Acts of Congress on the same subject matter. The same rules of construction that apply to statutes, also apply to treaties.[22]

A review of the policy of the United States with

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[21] Foster v. Neilson, 2 Pet. 253, 7 L. Ed. 415; Bondinot v. U.S., 11 Wall. 616, 20 L. Ed. 227; Whitney v. Robertson, 124 U.S. 190; Valentine v. U.S., 229 U.S. 5.

[22] U.S. v. Reynes, 9 How. 127, 13 L. Ed. 74.

respect to the territorial limits of the Gulf Coast States necessarily requires the conclusion that a three league boundary has been recognized for these states and for the United States.

After the admission of Louisiana, Alabama and Mississippi into the Union in 1812, 1817 and 1819, respectively, the next action of Congress recognized the independence of Texas (Cong. Globe, 24th Cong. 2d Sess. 270). This was done in compliance with the message of President Jackson, December 22, 1836, when he requested such recognition with the statement: (Cong. Globe 24th Cong. 2d Sess. 45).

> "The title of Texas to the territory she claims is identical with her independence. . . ."

Admittedly Texas then claimed boundaries 3 leagues seaward from her mainland by virtue of an act passed by the Texas Congress on December 19, 1836.[23] No protest of any kind was raised in Congress, the State Department, or by other nations which followed the United States in recognizing Texas' independence as to the seaward boundaries fixed by the Republic of Texas.

When Texas was admitted to the Union its boundaries admittedly were fixed by its laws as three leagues from land in the Gulf of Mexico.[24]

Florida's Constitution of 1868 fixed its seaward boundaries three leagues in the Gulf and this Con-

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[23] U.S. v. Texas, 339 U.S. 707, 717.
[24] U. S. v. Texas, 339 U.S. 717-718.

stitution was approved by the Congress of the United States on June 25, 1868 (15 Stat. 73).

The International Boundary between the United States and Mexico was fixed three leagues in the sea by the Treaty of Guadelupe Hidalgo in 1848[25] and by the Gadsden Purchase Treaty in 1853.[26] This three league boundary was reaffirmed and readopted by Boundary Conventions between the United States and Mexico in 1882, 1884, 1889, 1894, 1895, 1896, 1900 and 1905.[27]

Thus from 1836 to date the offshore boundaries of coastal states have been uniformly fixed and recognized three leagues in the sea around the entire perimeter of the Gulf. Louisiana cannot by any test of reason be considered as an exception to such a universal rule of long standing. If the act admitting Louisiana to the Union did not expressly fix its seaward boundary three leagues from coast, these subsequent acts of Congress, and Treaties made by the President with the approval of the Senate, have supplied that omission.

D. Congress Was Advised Before Passage of the Submerged Lands Act that Louisiana's Boundaries Extended Three Leagues From Coast.

In the hearings before the Committee on Interior

[25] 9 Stat. 922, 923, 5 Millers Treaties 207, 213.

[26] 10 Stat. 1031, 6 Millers Treaties 293.

[27] 1 Malloy's Treaties 1141, 1159, 1165, 1167, 1174, 1175, 1179, 1192, 1199.

and Insular Affairs in the United States Senate beginning February 16 and ending March 4, 1953, an exhibit appears on page 35 showing the approximate areas of submerged lands within state boundaries. This exhibit covers all of the coastal states. A note appended to the exhibit with reference to State boundaries in the marginal sea reads as follows:

> "In figuring the marginal sea area, only original state boundaries have been used. These coincide with the 3-mile limit for all States, except Texas, Louisiana and Florida Gulf coast. In the latter cases, the 3-league limit as established before or at the time of entry into the Union has been used."

This exhibit brought to the attention of Congress the fact that Louisiana's seaward boundary was three leagues from coast at the time of its admission into the Union. The Congressional Committee Reports recommending passage of the Submerged Lands Act set forth in historical form the various acts of possession exercised by Louisiana and the other gulf coastal states within their historic boundaries and Congress passed the act with full knowledge and recognition of the fact that Louisiana and other gulf coastal states were claiming historic boundaries and rights within those boundares to the extent indicated. These Committee Reports will be referred to in greater detail in the next section of this brief.

E. Plaintiff's Motion Admits Facts Pleaded in the Answer of the State of Louisiana.

Louisiana alleges in its answer that it has from time immemorial exercised acts of ownership and possession of a three leagues seaward boundary with the knowledge, approval, and acquiescence of the United States, and that this contemporaneous construction of the Act of Admission is evidence that a three league boundary in the gulf was understood and intended by the State and Federal Government.

Plaintiff's Motion for Judgment of course admits every material fact properly stated in the pleadings of this defendant. ". . . All reasonable intendments and inferences are to be taken against movant[28] . . . Furthermore, the policy of the Courts is to dispose of lawsuits on the merits rather than on motions for judgment on pleadings . . . Such a motion is proper only if no material issue of fact is presented by the pleadings."[29]

In the fifth, sixth and seventh defenses of Louisiana's Original Answer, the State alleges numerous acts of possession, sovereignty and jurisdiction exercised by it over the submerged lands and waters within three leagues of its coast continuously since the date of admission into the Union. Such possession and ju-

[28] Rule 12 Fed. Rules of Civil Procedure, National Metropolitan Bank v. U.S., 323 U.S. 454.

[29] Barron & Holtzoff, "Federal Practice and Procedure", Vol. 1, pages 671-673, Sec. 359.

risdiction have been exercised with the knowledge and acquiescence of the United States. Such acquiescence on the part of plaintiff has been active in the sense that the Federal Government has sought and obtained transfers of rights to use submerged lands for light houses and game refuges and reservations. The detailed acts of sovereignty and ownership exercised by the States as set forth in the original answer are adopted and made part of Louisiana's Answer to the Amended Complaint. These matters are evidence of a contemporaneous construction of Louisiana's Act of Admission which are entitled to great weight in determining the boundaries of the State seaward from its coast.

These allegations made by the State of Louisiana in its Original Answer are supported in a large part by the legislative history of the Submerged Lands Act.

Senate Report No. 133, on the basis of which the Submerged Lands Act was passed, makes this statement on page 6:

> "The offshore rights which are confirmed to the States and their grantees are rights growing out of the concept of ownership and proprietary use and development—rights which were first asserted by the Federal Government in recent years and which it has never exercised nor enjoyed. These rights, legally vested in the States and their grantees by Senate Joint Resolution 13, have in fact been enjoyed and exercised by them from the beginning of our history as a nation until the date of the California decision."

The universal belief that the States owned submerged lands lying seaward of their coasts finds expression on page 21 of the Senate Report:

> "Federal claims to the submerged offshore lands within State boundaries were not heard until the late 1930's. Prior to that time it was the virtually unanimous opinion of all who considered the problem that the States owned all of the lands beneath navigable waters within their boundaries. Indeed, in the California case, the Supreme Court conceded that the Court had many times in the past—
>
> "used language strong enough to indicate that the Court then believed that the States owned soils under all navigable waters within their territorial jurisdiction, whether inland or not (332 U.S. at 36).
>
> "As late as 1933, the then Secretary of the Interior, Harold L. Ickes, in refusing to grant to Dr. Olin Proctor, Long Beach dentist, a Federal oil lease on offshore submerged lands within the boundaries of California, recognized that—
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> "Title to the soil under the ocean with the 3-miles limit is in the State of California and the land may not be appropriated except by authority of the State (hearings on S.J. Res. 13; also on S.J. Res. 195, 81st Cong.).
>
> "The first doubts as to State ownership of the submerged offshore lands were publicly expressed in 1937 in response to the insistence of applicants for Federal oil and gas leases on those lands. In Congress, the alleged existence of Federal rights in these offshore areas was first asserted in the Nye resolution introduced in the

75th Congress in 1938, and in the Hobbs, O'Connor, Nye and Walsh resolutions introduced in the 76th Congress in 1939. Congress, however, refused to change the well-established rule of State ownership, and none of these resolutions was enacted."

In an appendix to the Senate report, the following statement appears on page 54.

"Throughout our Nation's history the States have been in possession of and execising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black, had—

"used language strong enough to indicate the Court then believed that the States also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

"That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land."

House Report No. 215 makes the following statement on page 25:

" . . . Four States—California, Florida, Texas

and Louisiana—have issued leases covering areas off their coasts. *Of these, only the leases issued by Florida, Texas and Louisiana embrace Continental shelf areas.* All of the Florida leases were issued prior to the decision of the United States Supreme Court in *United States vs. California*, on June 23, 1947. *All of the Texas leases and about one-half of the Louisiana leases, covering in the aggregate more than 1,000,000 acres, were isued subsequent to June 23, 1947. . . .*" (Emphasis Supplied)

* * *

"All of the Continental Shelf leases involved were issued at times when there was no Federal claim to the areas in which they were located. . . ."

The fact that the United States has consistently acquiesced in and recognized State claims to submerged lands and territorial waters is emphasized on pages 42 and 43 of the appendix to House Report No. 215:

"*Federal Government has traditionally obtained grants from the States.*

"At the request of executive departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters and within the 3-mile belt. (See Government's brief p. 227 et seq. and appendix to California's brief, p. 169 et seq. in *U. S. vs. California.*) In 14 separate instances, from 1889 to 1941, grants of such lands admittedly outside inland waters were made

by the States of Washington, California, Texas, Florida, and South Carolina. . . Since 1790 an additional 159 grants of submerged lands have been made by practically every coastal State, but the Government claimed in its brief that they covered only inland waters.

"These facts established conclusively that the States, during more than a century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries.

* * *

". . . It appears to the committee that the *States have exercised every sovereign right incident to the utilization of those submerged coastal lands.*

* * *

". . . . In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the union in 1845 by the annexation agreement . . ." (Emphasis supplied)

The foregoing acts of possession by Louisiana and the other gulf coastal states with the active and passive acquiescence of the agencies and departments of the Federal Government furnish contemporaneous construction of Louisiana's Act of Admission. Although many of these facts in Louisiana's Answer are

pleaded in connection with pleas of prescription and estoppel, they need not be considered in support of such pleas in order to construe Louisiana's Act of Admission.

Plaintiff's counsel argues that prescription and estoppel cannot be pleaded against the national Sovereign. However, the rule concerning contemporaneous construction is one of interpretation rather than estoppel or prescription. As stated in Sutherland on Statutory Construction, (3d Ed.) Vol. 2, pages 520-522, Sec. 5107-8:

> "Like all precedents, where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time it will be regarded as of great importance in arriving at the proper construction of a statute. Thus contemporaneous interpretations of five, nine, ten, eighteen, twenty, twenty-five, fifty, fifty-six, sixty, and seventy years have been permitted to govern legislative meaning. One of the soundest reasons sustaining contemporaneous interpretations of long standing is the fact that reliance has been placed thereon by the public and those having an interest in the interpretation of the law. While the principle here is not strictly that of estoppel running against the government there is some analogy to that principle when the interpretation has been made by a government agency or officer.
>
> * * *
>
> ". . .While the time at which the interpretation was made is an important factor, an interpreta-

> tion made a considerable time after the enactment of a statute may carry great weight."

In connection with the foregoing quotations, Section 5104 and the cases cited by the same author, Vol. 2, page 514-515, should be considered:

> "Contemporaneous and practical interpretation serves as another aid of statutory construction, and therefore must be weighed against the other factors pertinent to the determination of legislative intent. . . . Whether the language of a statute is ambiguous or not will depend upon a number of factors, and it is submitted that contemporaneous and practical interpretation may serve as one of those factors. . . ."

If Louisiana's Act of Admission be considered in the light of the interpretation placed upon it by the Nation since the beginning of its history, and by the State since its admission, then the conclusion must be reached that Congress intended to fix the boundaries three leagues seaward along the entire coast of Louisiana.

IV.

THE SUBMERGED LANDS ACT DID NOT INTEND TO ADOPT AN UNEQUAL AND VARYING MEASURE OF TERRITORIAL SOVEREIGNTY FOR THE GULF STATES IN THE SEA ADJOINING THEIR SHORES.

As plaintiff's counsel suggests on pages 253 and 254 of its brief, it would be surprising if the Congress intended to fix different limits for different

states along the shores of the same gulf or sea. Since the seaward boundaries of the United States and of the Gulf Coast States are co-extensive, it would equally be surprising if the national boundary in the Gulf varied from State to State along the shores of this same sea. The reasonable conclusion is that the Congress in the development of our national boundaries, intended to be consistent in its dealing with the states in this respect. It is also reasonable to conclude that the Submerged Lands Act did not intend to adopt an unequal and varying measure of territorial sovereignty for the Gulf States in the sea adjoining their shores.

The Submerged Lands Act provides uniformly for a three mile marginal belt in the two great oceans, the international boundary in the Great Lakes, and for a three league limit in the Gulf of Mexico. Uniformity can be preserved in the Gulf by recognizing the fact that the characteristics of the coast and the nature and location of this sea, as well as its historic background, justify a different treatment from that of the two oceans, and that a wider range "in which to exercise the vigilance of the government, will be assented to"[30] on a regional basis for all of its bordering States.

The rights to submerged lands in the sea and in navigable waters include political rights as

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[30] Church v. Hubbart, 2 Cranch 187, 234,236.

well as rights of property. This Court has so held in a long line of cases terminating in the decision rendered in *United States vs. Texas*, 339 U. S. 716. Although the Submerged Lands Act dealt with property rights it also dealt with State boundaries under navigable waters and the State boundaries in the sea relate directly to political rights. Certain political rights of the United States described as "paramount rights" by this Court, were reserved to the United States in Section 3(d) and Section 6 of the Act, but other political rights pertaining to State sovereignty were not withheld from the States.

We do not dispute the statement on page 181 of Plaintiff's brief that Congress is not constitutionally required to make the same grants of federal property and lands to each and every State, but State boundaries insofar as navigable waters and submerged lands in the sea are concerned, are not land and property in the ordinary sense. The sea and its shores are common properties of all citizens of the coastal states, and are not subject to private ownership. This is true both in civil law and in the common law.[31]

If the Court must consider sources not contained in Louisiana's Act of Admission in determining the extent of the States boundaries, and their rights

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[31] Martin v. Waddell, 41 U.S. (16 Pet. 367), Kent's Commentaries (12 Ed), Vol. III p. 558-9; Morgan v. Nagodish, 40 La. Ann. 246, 252, 3 So. 636; Justinian Lib. II, Tit. 1, para. 1, 4; 1 Domat, Sec. 1, Art. 1, par. 115.

therein under the Submerged Lands Act, it can and should give due consideration and weight to the principles of uniformity and equality among all the States in the gulf coast.

This court in *Wisconsin vs. Michigan*, 295 U. S. 455, 462, declared the rule that State sovereignty is involved in questions concerning State boundaries in navigable waters, and that the principle of equality enters into the judicial construction of State boundary acts. In that case the Court said:

> ". . . Questions of territorial jurisdiction in respect of fishing constitute the occasion of the present controversy. And it confidently may be assumed that, when fixing the boundary lines in the waters of the bay, Congress intended that Michigan and the State to be erected out of Wisconsin Territory should have equality of right and opportunity in respect of these waters, including navigation, fishing and other uses. . .
>
> The rule that the States stand on an equal level or plane under our constitutional system (*Wyoming vs. Colorado*, 259 U. S. 419, 465, 470) makes in favor of that construction of the boundary provisions under consideration. Cf. *Connecticut vs. Massachusetts*, 282 U. S. 660, 670."

The rule that acts of admission must be construed in accordance with principles of sovereign equality between States similarly situated was thus expressed in the earlier case of *Draper vs. United States*, 164 U. S. 240, 244.

> "As equality of statehood is the rule, the

words relied on here to create an exception cannot be construed as doing so, if, by any reasonable meaning, they can be otherwise treated."

The Act of Admission which describes the Southern boundary of Louisiana as including all islands within three leagues of the coast should therefore be construed to include all submerged lands and waters within three leagues of its coast. There is nothing in the Act of Admission or in the Submerged Lands Act that would suggest or require any other construction.

V.

THE UNITED STATES HAS LONG SINCE FIXED THE NATIONAL BOUNDARY THREE LEAGUES IN THE GULF AND ALL STATE BOUNDARIES ARE CO-EXTENSIVE WITH THAT BOUNDARY.

In a previous section of this Brief, the Court's attention has been called to various treaties made by the United States with Mexico and the Republic of Texas and to the Act of Congress approving the Constitution of Florida. All of these treaties and Acts of Congress fix a boundary three leagues in the Gulf of Mexico. These treaties and the Acts of Congress constitute an approval of a three-league boundary by Congress as contemplated in Section 2(b) and in Section 4 of the Submerged Lands Act.

Plaintiff's counsel argues that the boundaries of the States cannot be further seaward than those of the United States, but that the boundaries of the

United States may be further seaward than those of the States. Counsel cites no authority for the proposition that the boundaries of the United States are not necessarily those of the States. In fact, the authorities are the reverse of that conclusion. This Court has on many occasions held that the boundaries of the states are co-extensive with those of the United States, and that in the continental United States there is no belt of land under the sea adjacent to the coast which is the territory of the United States and not the territory of the states. The decisions of this Court in the California, Louisiana and Texas cases did not change that rule.

Since none of these Tidelands Cases dealt with State boundaries and since the Court in the Louisiana case specifically said, "the matter of State boundaries has no bearing on the present problem," it cannot be said that the decisions in those cases change the proposition that the boundaries of the states do extend seaward as far as the National boundary goes.

In fact the Submerged Lands Act and the Outer Continental Shelf Lands Act passed by the same Congress, and with approval of the same President, unmistakably recognized and applied this principle consistently followed in this Republic from its inception. The Submerged Lands Act in Section 9 says categorically that the provisions of that act shall not be "deemed to affect in any wise the rights of the United States to the natural resources of *that portion* of the

subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 hereof . . ." and Section 2 of the Outer Continental Shelf Lands Act says that the term means ". . . all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Subberged Lands Act . . ." (Emphasis supplied) The Submerged Lands Act thus seems clearly to cover territorial jurisdiction wherein the limits of the State and of the Nation would be co-extensive, while the Outer Continental Shelf Lands Act is based upon rights belonging to the Federal Government not by ownership of territory but by reason of proximity, or extra-territorial rights.

Congress reviewed the jurisprudence on this subject before passing these two Acts. Senate Committee Report No. 133, p. 59, cites the case of *Manchester vs. Massachusetts*, 139 U.S. 240.

In *Commonwealth vs. Manchester*, 152 Mass. 230, 241, 25 N. E. 113, 116, 9 L.R.A. 236, Mr. Justice Holmes stated the opinion of the Supreme Judicial Court of Massachusetts:

> "There is no belt of land under the sea adjacent to the Coast which is the property of the United States and not the property of the States."

The foregoing decision was affirmed by this Court under the title of *Manchester vs. Massachusetts*, 139 U.S. 240. This is the authority cited in Senate Report

No. 133 in connection with its recommendation for the passage of the Submerged Lands Act.

That the boundaries of the United States do not extend beyond those of the States was the definite conclusion of this Court in *Rhode Island vs. Massachusetts*, 12 Pet. 729, 9 L. Ed. 1262:

> ". . . Hence resulted the principle laid down in *Harcourt vs. Gaillard*, (12 *Wheat.* 524,), that the boundaries of the United States were the external boundaries of the Several States. . . ."

Although the Court in the foregoing cases was considering the boundaries of the original thirteen colonies, the principle has been uniformly applied as to States subsequently carved out of territorial acquisitions.

The earlier case of *Harcourt vs. Gaillard* (1827), 25 U.S., 12 Wheat. 524, 6 L. Ed. 716, refutes the idea that the United States, when the Union was formed, became possessed of any property whatever except through one of the original states. The Court in that case said:

> "There was no territory within the United States that was claimed in any other right than that of some one of the confederate states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the States."

Not only did the federal government acquire nothing in the way of property from the English Crown, but the Constitution gave it no right to acquire

any territory on this continent to be held and governed permanently as such. The national government cannot enlarge its *territorial* limits bordering the United States in any way except by the admission of new states. Article 4, Section 3, U. S. Constitution.

The principle of unity in *territorial* extent as between the United States and its member states is thus expressed in *County of Lane vs. Oregon*, 74 U.S. 71, 76:

> "The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union, there could be no such political body as the United States."

The foregoing statement is reiterated in *Texas vs. White*, 74 U.S. 700, 725.

Later, in *Downes vs. Bidwell*, 182 U.S. 244, 277, 278, this Court said:

> ". . .when the Constitution declared that all duties shall be uniform 'throughout the United States', it becomes necessary to inquire whether there be any territory over which Congress has jurisdiction which is not a part of the 'United States', by which term we understand the *states* whose people *united* to form the Constitution, and such as have been admitted to the Union

upon an equality with them. . .", and reached the conclusion we assert.

The Court answered this question by saying (182 U.S. 278):

> "The words 'throughout the United States' are indistinguishable from the words 'among or between the several states'."

As further evidence of the fact that the United States and the States of the Union have boundaries that are coextensive, and that the boundaries of the United States do not extend beyond those of the Union of States and incorporated territories, this Court said in *Brown vs. Grant*, 116 U.S. 207, 212:

> "Unless otherwise declared by Congress, the title to every species of property owned by a Territory passes to the State upon its admission into the Union. . ."

The Territory of Orleans included:

> "All that portion of country ceded by France to the United States, under the name of Louisiana, which lies South of the Mississippi territory at the 33rd degree of North Latitude."

There was no reservation or exception of any territory whatever in this Act of March 26, 1804 creating the Territory of Orleans (2 Stat. 283), nor in the Enabling Act of February 16, 1811 (2 Stat. 641), nor in the Louisiana Act of Admission (2 Stat. 701), except "waste and unappropriated lands" which do not include tidelands or submerged lands in the sea (*United States vs. Texas*, 339 U.S. 707).

The Submerged Lands Act was enacted without prejudice to the rights of the Gulf Coast States' claims to historic boundaries three leagues from the Coast in the Gulf of Mexico. While the Act made no specific reference whatever to National boundaries, the legislative history, referred to above, and the decisions of this Court, clearly show that the boundaries of the states are coextensive with the National boundary. The Congress undoubtedly concluded that the National boundary might thereby be fixed three leagues from the coast. Such a boundary should be uniformly that distance seaward from the coast. No contention has been made by Counsel for the Government that there should be a boundary of three miles from coast for some states and three leagues from coast for other states in the Gulf of Mexico.

Under no theory can the idea be justified that such a boundary would exist three miles along the coast of some States and three leagues from the coast of other States. Since the boundary was uniformly fixed at a certain distance in the Pacific Ocean, the Atlantic Ocean, and in the Great Lakes, it is not reasonable to state that Congress intended to have a boundary in the Gulf of Mexico that was lacking in uniformity and consistency.

VI.

LOUISIANA ACT 33 OF 1954 DEFINES THE STATE'S COAST LINE IN ACCORDANCE WITH APPLICABLE ACTS OF CONGRESS.

A. The Louisiana Coast Has Been Defined Pursuant to Acts of Congress as the Line Dividing Inland Waters from the Open Sea.

Act 33 of 1954 passed by the Legislature of Louisiana correctly designates the State's coast line in accordance with applicable Acts of Congress. In its third defense (Orig. Answer p. 17, et seq) Louisiana says that its boundaries extend to a line three leagues seaward of the line of demarcation between its inland waters and the open sea, said line having been established by the Act of Congress of February 19, 1895, as hereinafter shown.

By Act of Congress, approved February 10, 1807, by Thomas Jefferson as President, the Chief Executive of the United States was authorized and requested to cause a survey to be made of the coasts of the United States within twenty leagues of any part of the shores of the United States.

The Act of Congress of April 8, 1812, admitting Louisiana to the Union, described its southeasterly and southern limits as "the Gulf of Mexico", including all islands within three leagues of the coast. (2 Stat. 701, 702).

When Congress defined Louisiana's boundary in the Act of its admission into the Union as being three

leagues from coast into the Gulf of Mexico, Congress must be taken to have intended that the three league boundary line into the Gulf was from the coast line to be designated and defined by the agency of the federal government provided by said Act of Congress of February 10, 1807.

By Section 2 of the Act approved February 19, 1895[32] Congress provided authority in the Secretary of Commerce to designate and define "the line dividing the high seas from rivers, harbors, and inland waters."

In 1896 the Supreme Court held, that pursuant to the authority of the 1895 Act of Congress, the Secretary of Commerce by Department Circular 95 on May 10, 1895, "designated and defined the dividing line between the high seas and the rivers, harbors and inland waters of New York", and that the waters inside of that coast were "as much a part of the inland waters of the United States within the meaning of this Act as the harbor within the entrance" to the New York Harbor.[33]

This refutes the contention made by some that the coast line fixed under these Acts of Congress is for navigation purposes only. Fact is, the inland rules of navigation apply to navigation over inland waters because of the character of said waters as "inland waters." But, said waters are not "inland" because

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[32] 28 Stat. 672, 33 U.S.C. 1351.

[33] The Delaware, 161 U.S. 459, 463.

inland rules of navigation apply thereupon.

In 1946, Congress, By Sec. 101 of Reorganization Plan No. 3 (11 F.R. 7875), vested authority in the Commandant of the Coast Guard to designate and define the coast line under Sec. 2 of the Act of February 19, 1895.

By virtue of this authority the Commandant of the Coast Guard promulgated existing regulations that had been adopted by his predecessors under said Act "to establish the lines dividing the high seas from the rivers, harbors, and inland waters in accordance with the intent of the statute and to obtain its correct and uniform administration."

The regulations fix the *Boundary Lines of Inland Waters*, and provide that the waters inshore of the lines described are "inland waters" and the waters outside of the lines described are the high seas. CG-169, March 1, 1955, Part 82-Boundary Lines of Inland Water, Sec. 82.1.

Sec. 82.95 and 82.103 designate and define the coast line or outer boundary of the inland waters from Mobile, Alabama to Sabine Pass, Texas. These regulations define the inland waters as they had been marked and surveyed during the 19th Century as required by the Acts of Congress referred to above.

This coast line, including that of the State of Louisiana, is shown on a map prepared by the Commandant of the Coast Guard, and this coast line, so designated and defined in accordance with applicable

Acts of Congress, was accepted and approved by the Louisiana Legislature by Act No. 33 of 1954.

These boundaries are shown on a map attached to and made a part of the 1954 Act of the Louisiana Legislature, and also appear on U. S. Coast and Geodetic Survey Charts 1115 and 1116; (See Louisiana map appendix accompanying Louisiana's Brief filed March 28, 1957).

Under specific provisions of the 1807 and 1895 Acts of Congress, as amended, and the decisions of this Court, all of the waters inside of said coast line, therefore, are "as much a part of the inland waters" within the meaning of the Act as the New Orleans harbor.

By said Act 33 of 1954, Louisiana's historic gulfward boundary was simply restated as extending a distance into the Gulf of Mexico 3 marine leagues from said coast line.

Attention is directed to the fact that the Submerged Lands Act of May 22, 1953 recognized State ownership and quit claimed whatever right, title and interest which the United States had, if any, in and to all lands beneath navigable waters and natural resources within the seaward boundaries of a State in the Gulf of Mexico as they existed at the time such State became a member of the Union, but in no event, (Section 2b) "shall the term, 'boundaries' or the term 'lands' beneath navigable waters be inter-

preted as extending from the coast line * * * more than three marine leagues into the Gulf of Mexico."

The coast line adopted by the 1954 Act of the Louisiana Legislature is in accord with the Submerged Lands Act which thus defines "coast line":[34]

> "The term 'coast line' means the line of ordinary low-water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

The Act of February 19, 1895[35] authorized and directed the establishment of the "lines dividing the high seas from rivers, harbors and inland waters" and this line, as above described, has accordingly been adopted by the Legislature in 1954 as its "coast line".

Further support for the adoption of this line as Louisiana's coast line is found in a Congressional Act of July 17, 1939[36] which declared that the "term 'high seas' means all waters outside the line dividing the inland waters from the high seas, as defined in Section 151 of Title 33" (the Act of February 19, 1895).

This Court interpreting an Act of March 12, 1863 relating to captured and abandoned property

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[34] Title I, Sec. 2 (c), 67 Stat. 29, 43 U.S.C. 1301 (b).

[35] 28 Stat. 672, Sec. 2, 33 U.S.C. 151.

[36] 53 Stat. 1049, 46 U.S.C. 224 (a) (12).

has defined "Inland Waters" to apply to "all waters of the United States upon which a naval vessel could go other than bays, and harbors on the sea coast."[37]

Because of the unusually shallow depth of the waters of the Gulf along the extent of Louisiana's sea coast, and the existence of many shoals[38] and reefs it is not possible for sea going vessels to sail inland of the line dividing the high seas from the inland waters. This line, as fixed by the United States, traverses for the most part waters less than 6 fathoms in depth—in some instances less than 3 fathoms.

United States Coast and Geodetic Survey charts numbers 1115 and 1116 contained in defendant's Map Appendix heretofore filed show these water depths.

B. Louisiana Coast Line and Seaward Boundary Adopted By the Legislature Accomplishes Stability and Certainty of Location.

In view of the tortuous nature of Louisiana's shore line, the continuous changes that occur as a result of accretion and erosion, subsidence of land masses, and sudden changes caused by storms and hurricanes, there can be no certainty as to the location of any line along the shores of the State from

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[37] U.S. v. The Steam Vessels of War, 106 U.S. 607, 612, 27 L. Ed. 286, 287.

[38] A shoal or reef is defined as a part of the seabed "which comes within 6 fathoms of the surface, and so may constitute a danger to shipping." Encyclopaedia Britannica (1945 ed.) Vol. 16, p. 682.

year to year or even from day to day. There is a constant accretion of land in some segments and erosion of the shore in other segments. Some of these changes have occurred gradually, others have occurred rapidly. Storms and hurricanes have shifted the shore line and changed the shape of islands overnight. In a region such as this where oil and mineral exploration and development are being conducted on a grand scale, the base line for the measurement of a marginal belt cannot be a line whose location is constantly shifting. The coast line fixed by the Louisiana Legislature in accordance with the Acts of Congress, as the line dividing the inland waters from the open sea does not have this infirmity or uncertainty of location.

The "coastline of the United States" has always been measured along this line dividing the inland waters from the open sea. See: "The Public Domain" (1884), by Thomas Donaldson, printed by the Government Printing Office pursuant to Acts of Congress of March 3, 1789 and June 16, 1880, page 464, and United States Coast and Geodetic Survey charts 1115 and 1116 of the Gulf of Mexico in the Map Appendix filed with Louisiana's original brief.

This Court has, in at least two decisions, recognized the fact that Louisiana's coast line is a water boundary. In *Queyrouze vs. U.S.*, 70 U.S. (3 Wall.) 83, the Court made mention of the fact that Ship Shoal Lighthouse is on the coast of Louisiana. This lighthouse is one of the markers "designating the lines

dividing the high seas from the . . . inland waters" in accordance with the requirements of the Act of Congress of February 19, 1895, supra. In the *Queyrouze Case*, which is also entitled "The Josephine", the following statement is made regarding the locale of the controversy:

> "The schooner Josephine, laden with a cargo of three hundred and twenty-two bales of cotton and a lot of slaves, was captured by the United States ship of war Hatteras, George F. Emmons, Esq., captain, on the high seas, off Ship Shoal Lighthouse on the coast of Louisiana on the 28th of July, 1862 . . ."

In Mr. Chief Justice Chase's opinion he stated that the steamer Josephine "must have been coming from some point west of Ship Shoal Lighthouse, which is laid down on the coast Survey Charts as more than a 100 miles west of the Mouths of the Mississippi".

In the case of *Louisiana vs. Mississippi*, 202 U. S. 1, 43, the Court after quoting the enabling Act of Congress for the creation of the State of Louisiana (Act of February 20, 1811, 2 Stat. 641), declared that Louisiana's boundary on the east and south is a water boundary following the deep water sailing channel in the open sea or Gulf of Mexico. The Court said:

> "The eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep-water

sailing channel line to get around to the westward. A little over one year later Louisiana was created a state by the Act of Congress of April 8, 1812, with this identical eastern boundary line; and the addition of territory by the Act of April 14, 1812 did not affect the deep water sailing channel line as a boundary."

Earlier in its opinion (202 U. S. 36.) the Court referred to maps and diagrams which are made a part of the opinion and stated:

"Map or diagram No. 1, given in the opening statement, shows the limits as thus defined.

By an act of Congress approved April 14, 1812 (2 Stat. at L. 708, Chap. 7), additional territory was added to the State of Louisiana. This added territory is shown on map or diagram No. 2."

These diagrams very closely follow the deep sailing channel where the markers, buoys and lighthouses were placed to establish the dividing line between the inland waters of Louisiana and the open sea.

CONCLUSION

Louisiana submits that it is entitled to the submerged lands and natural resources within three leagues of its coast.

Louisiana further submits that the Coast Guard, acting pursuant to Congressional direction, has properly defined the coast of Louisiana, and Louisiana has recognized it by legislative Act 33 of 1954, and that this Court should also recognize that the said coast line has been correctly defined and fixed.

We believe that the facts of which this Court can take judicial notice are sufficient to justify Louisiana's title to the submerged lands and natural resources three leagues from the coast. But, if there are any relevant and essential facts on which Louisiana relies, and of which this Court will not take judicial notice, then plaintiff's motion for judgment should be overruled and Louisiana granted the right to prove such facts.

Louisiana further submits that no accounting is due by the State of Louisiana to the United States for any revenues derived by it from or respecting said area.

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PROOF OF SERVICE

I,_____, one of the Attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the____day of August, 1958, I served copies of the foregoing Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint by the United States, by leaving the required number of copies thereof at the offices of the Attorney General and the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and by mailing the required number of copies, postage prepaid to the Attorneys General of the States of Texas, Mississippi, Alabama and Florida.

_____

OF COUNSEL